IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PETER A. DEFILLIPO,	)	
	)	C.A. No. 08C-02-009 JTV
v.	)	
	)	
RONALD A. QUARLES, JR. and	)	
FRED AND SON TOWING, a	)	
foreign business entity and	)	
PATRICIA QUARLES,	)	
	)	
Defendants	)	

Submitted: March 15, 2010
Decided: June 30, 2010

I. Barry Guerke, Esq., Parkowski, Guerke & Swayze, Dover, Delaware. Attorney for Plaintiff.

William J. Cattie, III, Esq., Rawle & Henderson, Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of
Defendants' Motion For Reargument
Denied

VAUGHN, President Judge

DeFillipo v. Quarles, et al.
C.A. No. 08C-02-009 (JTV)
June 30, 2010

ORDER

Upon consideration of the moving defendants' motion for reargument, the plaintiff's opposition, and the record of this case, it appears that:

1. The moving defendants, Fred and Son Towing and Patricia Quarles, have moved for reargument of a February 26, 2010 opinion that granted in part and denied in part their motion for summary judgment. The plaintiff, Peter A. DeFillipo, opposes the motion.

2. This personal injury action is the result of a March 30, 2007 car accident that occurred in New Castle County, Delaware. The plaintiff, Peter A. DeFillipo, was changing his tire on the shoulder of I-495. He alleges that he was seriously injured when a Volkswagen Golf veered onto the shoulder and struck him. The defendant, Ronald A. Quarles, Jr. was the operator of the Golf. Also named as defendants are Fred and Son Towing and Patricia Quarles, the owner of Fred and Son Towing. One of the plaintiff's contentions for liability against Fred and Son Towing and/or Patricia Quarles was that Ronald Quarles was the servant, agent or employee of Fred and Son Towing and/or Patricia Quarles, and was acting within the scope and course of that relationship at the time of the accident.

3. Fred and Son Towing was insured by Stonington Insurance Company. Stonington filed a declaratory judgment action in the United States District Court for the Eastern District of Pennsylvania, alleging that it had no duty to defend or indemnify Ronald Quarles.[1] On a motion for partial summary judgment filed by

[1] *See* Def. Mot. Summ. J. Ex. A.

Stonington, the District Court concluded that Ronald Quarles was driving the Golf in furtherance of his own business, and not in furtherance of the business of Fred and Son Towing.[2] As a result of this finding, and other language in the policy not relevant here, the District Court granted Stonington's motion for partial summary judgment on June 25, 2009. After the June 25th Order, the parties reported that the remaining issues in the declaratory action had been settled.[3] Accordingly, the District Court dismissed the matter, with prejudice, on August 10, 2009.[4]

4. In a February 26, 2010 decision, this Court determined that the plaintiff was estopped by the doctrine of collateral estoppel from proceeding against Fred and Son Towing and/or Patricia Quarles on a theory of *respondeat superior*. Summary judgment was granted as to that theory of liability. Additionally, this Court concluded that neither *res judicata* nor collateral estoppel precluded the plaintiff from proceeding on a theory of negligent entrustment, and summary judgment was denied as to that theory of liability.

5. The moving defendants contend that negligent entrustment is not a viable theory of recovery against them because there is a lack of factual support in the discovery record as to that theory. The moving defendants argue that the transcript from the hearing demonstrates that the court "inquired as to the Motion and the Count

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[2] *Stonington Ins. Co. v. Patricia Quarles et. al.*, No. 2:08-cn-1402, at 8 (E.D. Pa. June 25, 2009) (ORDER) ("Order").

[3] The remaining issues related to whether Stonington had a duty to defend or indemnify Fred and Son Towing and/or Patricia Quarles.

[4] Pl. Mot. Opp. Summ. J. Ex. 1.

in the Plaintiff's Complaint alleging negligent entrustment."[5] Consequently, the moving defendants submit that "the correct disposition would be dismissal of the Plaintiff's entire Complaint against them, leaving only the Plaintiff's action against Ronald A. Quarles, Jr."[6]

6. A motion for reargument will usually be denied unless the court has "overlooked a controlling precedent or legal principles, or the court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."[7] A motion for reargument should not be used merely to rehash the arguments already decided by the court, nor will the court consider new arguments that the movant could have previously raised.[8] The movant "has the burden of demonstrating newly discovered evidence, a change in the law, or manifest injustice."[9]

7. After reviewing the moving and responding papers in connection with the motion for summary judgment, the hearing transcript, and the February 26, 2010 opinion, I conclude that the moving defendants' motion for reargument must be denied. While it is true that the negligent entrustment theory was discussed, or at

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[5] Mov. Defs.' Mot. Rearg. at 2.

[6] *Id.*

[7] *Lamourine v. Mazda Motor of Am.*, 2007 WL 3379048, at *1 (Del. Super.).

[8] *State v. Brooks*, 2008 WL 435085, at *1 (Del. Super.) (internal quotation marks omitted); *St. Search Partners, L.P. v. Ricon Int'l, L.L.C.*, 2006 WL 1313859, at *1 (Del. Super.).

[9] *Brooks*, 2008 WL 435085, at *1 (internal quotation marks omitted).

least mentioned, at the hearing on the motion, the February 26, 2010 opinion concluded that only the *respondent superior* claim was disposed of under collateral estoppel. Grounds other than *res judicata* and collateral estoppel were not considered as a possible basis for summary judgment on the negligent entrustment claim. If the defendants believe that they are entitled to summary judgment on the negligent entrustment claim, they will have to file an additional motion for summary judgment with the plaintiff being given an opportunity to be heard thereon.

8. Accordingly, the moving defendants' motion for reargument is hereby ***denied.***

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File